

SUSAN MARTIN (AZ#014226)
JENNIFER KROLL (AZ#019859)
MARTIN & BONNETT, P.L.L.C.
1850 N. Central Ave. Suite 2010
Phoenix, Arizona 85004
Telephone: (602) 240-6900
smartin@martinbonnett.com
jkroll@martinbonnett.com

BRIAN J. O'DWYER (*pro hac vice app. filed herewith*)
GARY SILVERMAN (*pro hac vice app. filed herewith*)
O'DWYER & BERNSTIEN, LLP
52 Duane Street, 5th Floor
New York, NY 10007
Telephone: (212) 571-7100
bodwyer@odblaw.com
gsilverman@odblaw.com

Attorneys for Plaintiff U.S. Airline Pilots Association

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

U.S. Airline Pilots Association,)	
)	
Plaintiff,)	
v.)	Case No.:
)	
US Airways, Inc.,)	
)	COMPLAINT
Defendant.)	
_____)	

Plaintiff U.S. AIRLINE PILOTS ASSOCIATION (hereinafter "USAPA"), by and through its attorneys, as and for its Complaint against defendant, respectfully alleges as follows:

INTRODUCTION

1
2 1. This is an action to compel an airline employer to submit a dispute arising
3 under the parties' collective bargaining agreement to arbitration in accordance with the
4 dispute resolution procedures provided for thereunder and to fully comply with the letter
5 and spirit of the collective bargaining agreement to effectuate its mandatory dispute
6 resolution procedures.

7 2. Under the Railway Labor Act, disputes between employers and unions
8 concerning or implicating interpretation or application of collective bargaining
9 agreements are "minor disputes", subject to compulsory and binding arbitration before
10 System Boards of Adjustment.

11 3. Federal labor policies strongly favor enforcement of dispute resolution
12 procedures provided for in collective bargaining agreements.

13 4. The dispute underlying the instant action to compel arbitration relates to
14 defendant's termination of Captain Edward Myer without just cause and, therefore, in
15 violation of the parties' collective bargaining agreement.

16 5. Upon information and belief, defendant has failed and refused to participate
17 in and comply with the dispute resolution procedures provided for in the collective
18 bargaining agreement on the alleged grounds that certain procedural steps provided for
19 therein were not followed.

20 6. However, it is settled that where, as here, the underlying dispute arises
21 under and is covered by the parties' collective bargaining agreement, any issues relating
22 to whether the grievance procedures were followed are for the arbitrator to resolve and do
23 not impact the right to obtain an order compelling the employer to arbitrate the dispute.

24 7. In accordance with long settled precedent, federal labor policy and the
25 parties' collective bargaining agreement, Plaintiff is entitled to an order compelling
26 defendant to comply with the contractual dispute resolution procedures and to submit the
27 dispute regarding Captain Edward Myer's termination from employment without just
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1 cause in violation of the collective bargaining agreement to the relevant System Board of
2 Adjustment

3 **JURISDICTION AND VENUE**

4 8. This Court has subject matter jurisdiction over this action under the
5 Railway Labor Act (“RLA”), 45 U.S.C. §§ 151 *et seq.*, pursuant to 28 U.S.C. § 1331.
6 This Court also has jurisdiction herein pursuant to 28 U.S.C. § 1337, as this is an action
7 arising under a statute that regulates commerce and/or protects trade and commerce
8 against restraints, namely, the RLA.

9 9. Venue is proper in the District of Arizona pursuant to 28 U.S.C. §1391(b),
10 in that it is the district where, upon information and belief, a substantial part of the events
11 giving rise to this action occurred. Venue is also proper in this Court because jurisdiction
12 is not dependent on diversity of citizenship and the District of Arizona is a district where
13 USAPA is doing business, and where defendant maintains its principal place of business.

14 **PARTIES**

15 10. USAPA is a private, unincorporated association operating as a labor
16 organization. USAPA is a “representative” as defined by the RLA, 45 U.S.C. § 151,
17 Sixth, and is the certified collective bargaining representative of US Airways pilots.
18 USAPA has been the certified collective bargaining representative of the pilots of US
19 Airways since April 18, 2008 at which time a former union, the Air Line Pilots
20 Association, (“Association”), was decertified. USAPA has its principal place of business
21 located at 200 E. Woodlawn Road, Suite 250, Charlotte, North Carolina, 28217.

22 11. USAPA is the successor to the Association and stands in its place with
23 respect to collective bargaining agreements to which the Association was a party with US
24 Airways and America West Airlines.

25 12. US Airways (also referred to herein as “the Company”) is a commercial
26 airline with national and international operations, and is a “common carrier by air” within
27 the meaning of 45 U.S.C. § 181, and as such its labor relations is governed by the RLA,
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1 45 U.S.C. §§ 151 *et seq.* US Airways has its principal place of business located at 111
2 West Rio Salado Parkway, Tempe, Arizona 85281.

3 13. Upon information and belief, US Airways is a wholly owned operating
4 subsidiary of US Airways Group.

5 **FACTS**

6 14. USAPA, as the successor to the Association, and US Airways (hereinafter
7 collectively referred to as “the parties”) are parties to a collective bargaining agreement,
8 as amended and supplemented, that defines certain terms and conditions of employment
9 for the pilots of US Airways formerly employed by America West Airlines, which is
10 referred to herein as the “2004 America West CBA”.

11 15. The 2004 America West CBA applies to US Airways Pilots “domiciled”
12 out of US Airways’ Phoenix-based operations.

13 16. The 2004 America West CBA applies herein as the dispute underlying the
14 instant matter involves the termination of a US Airways pilot domiciled in Phoenix.

15 17. The 2004 America West CBA contains provisions, including, but not
16 limited to, Sections 19 and 21 thereof, relating to the discipline and discharge of pilots.
17 (True copies of Sections 19 and 21 of the 2004 America West CBA are annexed hereto as
18 Exhibits “A” and “B” respectively)

19 18. The 2004 America West CBA provides, at Section 19(C)(1) thereof, that
20 the Company must have just cause to discharge any pilot who is not on probation.

21 19. The 2004 America West CBA provides, at Section 19(B) thereof, that any
22 pilot who is dissatisfied with the Company’s decision regarding discipline or discharge
23 has a right of appeal pursuant to Section 21 of the 2004 America West CBA.

24 20. Pursuant to Section 204 of the RLA (45 U.S.C. § 184), airlines and the
25 unions representing their employees must establish arbitration panels, known as System
26 Boards of Adjustment, to resolve disputes involving interpretation or application of
27 collective bargaining agreements.
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1 21. Pursuant to Section 204 of the RLA (45 U.S.C. § 184), airlines and the
2 unions representing their employees must submit disputes involving interpretation or
3 application of collective bargaining agreements to these established System Boards of
4 Adjustment for final and binding resolution.

5 22. System Boards of Adjustment established by airlines and the unions
6 representing their employees have exclusive primary jurisdiction to resolve applicable
7 grievance disputes, and constitute mandatory, exclusive, and comprehensive system for
8 resolving grievance disputes.

9 23. The 2004 America West CBA provides for an arbitration panel to resolve
10 disputes, known as the America West Airline Pilots' System Board of Adjustment ("the
11 System Board").

12 24. In accordance with the 2004 America West CBA, including Section
13 21(a)(2) thereof, the parties have agreed to arbitrate disputes "growing out of the
14 interpretation or application of any of the terms of this Agreement".

15 25. In accordance with the 2004 America West CBA, including Section
16 21(a)(2) thereof, the parties have agreed to arbitrate disputes concerning pilot discipline
17 and termination through the System Board of Adjustment.

18 26. The 2004 America West CBA establishes two forms of the System Board, a
19 four-member System Board, comprised of two Company designees and two Union
20 designees (§§21(a)(1) and 21(c)(4)) and a five-member System Board, comprised of two
21 Company designees, two Union designees, and a neutral arbitrator from an established
22 panel of neutrals (§21(D)(4)).

23 27. The 2004 America West CBA also provides, at Section 21(C)(6) thereof,
24 that in the event the four-member System Board deadlocks, or is deemed to have
25 deadlocked on an appeal, USAPA can file a written appeal to the five-member System
26 Board.

27 28. The 2004 America West CBA also provides, at Section 21(C)(7) thereof,
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1 that the Company and Union can mutually agree in writing to bypass the four-member
2 System Board in disputes relating to discipline and discharge and have the dispute
3 determined by the five-member System Board.

4 29. In or around October 2010, a dispute arose between the parties concerning
5 the Company's termination of Captain Edward Myer without just cause in violation of
6 the 2004 America West CBA.

7 30. As of October 2010, Captain Edward Myer was a Phoenix-based US
8 Airways pilot with approximately 25 years of service as a Pilot for US Airways and was
9 not then on probation.

10 31. By letter dated March 29, 2010 from Captain Kenneth Wood, US Airways'
11 Regional Director of Line Flying PHX, Captain Edward Myer was notified as provided
12 for in Section 19 of the 2004 America West CBA that the Company was investigating his
13 alleged actions of March 12, 2010 while off US Airways' property.

14 32. By letter dated April 13, 2010 from Captain Edward Myer to Lyle Hogg,
15 Vice President of US Airways Flight Operations, Captain Myer invoked his right to a
16 hearing with respect to the Company's investigation of his alleged actions of March 12,
17 2010.

18 33. On April 23, 2010, a Section 19 hearing was held with respect to the
19 Company's investigation of Captain Edward Myer's alleged actions of March 12, 2010.

20 34. By letter dated October 29, 2010, the Company terminated Captain Edward
21 Myer from employment as a pilot with US Airways.

22 35. The Company's termination of Captain Edward Myer was without just
23 cause in violation of the 2004 America West CBA.

24 36. By letter dated November 12, 2010 from USAPA President Captain
25 Michael Cleary to First Officer Dennis Brennan, Chairman of the System Board, USAPA
26 invoked proceedings under Section 21(C) of the 2004 America West CBA with respect to
27 the termination of Captain Edward Myer.
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1 37. In accordance with Section 21(B) of the 2004 America West CBA, on
2 January 20, 2011, the Grievance Review Board met and considered Captain Edward
3 Myer's termination, with a decision of "unresolved".

4 38. By letter dated January 26, 2011 from USAPA President Captain Michael
5 Cleary to First Officer Dennis Brennan, Chairman of the System Board, USAPA invoked
6 procedures provided for under Section 21(A) of the 2004 America West CBA with
7 respect to the Company's termination of Captain Edward Myer.

8 39. In said letter dated January 26, 2011 from Captain Michael Cleary to
9 Dennis Brennan, USAPA sought to convene a System Board to hear and determine the
10 dispute concerning the Company's termination of Captain Edward Myer without just
11 cause,

12 40. By letter dated January 26, 2011 from USAPA Grievance Chairwoman
13 Captain Tracey Parella to Beth Holdren, US Airways Managing Director of Labor
14 Relations, Flight, USAPA sought the Company's agreement to bypass the four-member
15 System Board as provided for in accordance with Section 21(C)(7) of the 2004 America
16 West CBA and to postpone selection of the neutral arbitrator, as provided for in
17 accordance with Section 21(D) of the 2004 America West CBA.

18 41. The Company agreed with USAPA's request that the parties bypass the
19 four-member System Board and to postpone selection of the neutral arbitrator.

20 42. By email dated March 29, 2013 from USAPA Grievance Chairman
21 Captain Dave Ciabattone addressed to Ms. Beth Holdren, USAPA advised that it was
22 ready to proceed with the grievance concerning the termination of Captain Edward Myer
23 and requested that the Company "strike for arbitration" with respect to that matter, among
24 others.

25 43. The term "strike for arbitration" (also referred to as "strike for arbitrators")
26 means the process of selecting the neutral arbitrator for the five-member System Board
27 by the parties alternately striking the names of arbitrators from a pre-approved panel of
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1 arbitrators (the first strike to be determined by a coin toss) until only one name remains.
2 2004 America West CBA, §21(E)(2).

3 44. In accordance with applicable provisions of the 2004 America West CBA, a
4 five-member System Board cannot be convened to resolve disputes unless and until both
5 the Company and USAPA select a neutral.

6 45. The Company did not respond to Captain Dave Ciabattoni's March 29,
7 2013 email.

8 46. The Company failed and/or refused to strike for arbitration with respect to
9 the dispute concerning the Company's termination of Captain Edward Myer without just
10 cause in violation of the 2004 America West CBA as requested in Captain Dave
11 Ciabattoni's March 29, 2013 email.

12 47. By email dated April 18, 2013 from Captain Dave Ciabattoni addressed to
13 Ms. Beth Holdren, USAPA repeated its request for the Company to strike for arbitration
14 with respect to the dispute concerning the Company's termination of Captain Edward
15 Myer without just cause in violation of the 2004 America West CBA, as well as other
16 open grievances.

17 48. The Company did not respond to Captain Dave Ciabattoni's April 18, 2013
18 email.

19 49. The Company failed and/or refused to strike for arbitration with respect to
20 the dispute concerning the Company's termination of Captain Edward Myer without just
21 cause in violation of the 2004 America West CBA in response to Captain Dave
22 Ciabattoni's April 18, 2013 email.

23 50. In or around June 2013, USAPA repeated via telephone its request for the
24 Company to strike for arbitration with respect to the dispute concerning the Company's
25 termination of Captain Edward Myer without just cause in violation of the 2004 America
26 West CBA, as well as other open grievances.

27 51. The Company refused to strike for arbitration with respect to the dispute
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1 concerning the Company's termination of Captain Edward Myer without just cause in
2 violation of the 2004 America West CBA unless USAPA agreed in advance to stipulate
3 that the sole issue before the System Board would be whether the Myer grievance was
4 arbitrable.

5 52. Given there is no basis in the 2004 America West CBA or the parties' prior
6 conduct for the Company's proposed limitation on the arbitration of the Myer grievance,
7 USAPA declined the Company's proposed limitation and reiterated its request to strike
8 for arbitration with respect to the Myer grievance without limitation and consistent with
9 the 2004 America West CBA and the parties' prior conduct.

10 53. The Company maintained its position that it would not strike for arbitration
11 unless USAPA agreed to its inappropriate proposal limiting the issue before the System
12 Board to the question of arbitrability of the Myer grievance.

13 54. As of the date of this complaint, despite due demand therefor, the Company
14 has failed and/or refused to strike for arbitration with respect to the dispute concerning
15 the Company's termination of Captain Edward Myer without just cause in violation of
16 the 2004 America West CBA.

17 55. As of the date of this complaint, despite due demand therefor, the Company
18 has failed and/or refused to take necessary steps and measures to select the neutral
19 member of the System Board with respect to the dispute concerning the Company's
20 termination of Captain Edward Myer without just cause in violation of the 2004 America
21 West CBA.

22 56. As of the date of this complaint, despite due demand therefor, the Company
23 has failed and refused to take steps and measures to schedule the System Board with
24 respect to the dispute concerning the Company's termination of Captain Edward Myer
25 without just cause in violation of the 2004 America West CBA.

26 57. The Company's failure and refusal to take or complete necessary steps and
27 measures to submit Captain Edward Myer's appeal of his termination from employment
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1 to the five-member System Board is without justification and violates the 2004 America
2 West CBA.

3 **COUNT I**

4 **COMPELLING US AIRWAYS TO STRIKE FOR ARBITRATION**

5 58. USAPA repeats the allegations of paragraphs 1-54 as if fully set forth
6 herein.

7 59. In accordance with the 2004 America West CBA, including but not limited
8 to Section 19(C)(1) thereof, the Company was required to have just cause to terminate
9 Captain Edward Myer.

10 60. The Company breached the 2004 America West CBA by terminating
11 Captain Edward Myer from employment without just cause.

12 61. The dispute involving the Company's breach of the 2004 America West
13 CBA for terminating Captain Edward Myer without just cause is a "minor dispute"
14 within the meaning of the RLA.

15 62. The dispute concerning the Company's termination of Captain Edward
16 Myer without just cause in violation of the 2004 America West CBA is a dispute covered
17 by dispute resolution procedures provided for in the 2004 America West CBA.

18 63. Pursuant to applicable provisions of the 2004 America West CBA,
19 including but not limited to Sections 19(B) and 21(A)(2) thereof, the dispute concerning
20 the Company's termination of Captain Edward Myer without just cause in violation of
21 the 2004 America West CBA is within the jurisdiction of the five-member System Board.

22 64. The Company has no basis to condition its participation in the dispute
23 resolution procedures on USAPA's agreement to bifurcate questions concerning
24 arbitrability and the merits of the dispute.

25 65. The Company violates the 2004 America West CBA by conditioning, or
26 attempting to condition, its participation in the dispute resolution procedures provided for
27 in the 2004 America West CBA on USAPA's agreement to bifurcate questions
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1 concerning arbitrability and the merits of the dispute.

2 66. In accordance with the RLA, including Section 204 thereof, 45 U.S.C.
3 §184, courts have the power to compel carriers to arbitrate disputes “growing out of
4 grievances, or out of the interpretation or application of agreements concerning rates of
5 pay, rules, or working conditions . . .”

6 67. In accordance with the RLA, including Section 204 thereof, 45 U.S.C. §
7 184, this Court has the power to compel the Company to strike for arbitration and
8 proceed to participate in the five-member System Board to resolve the dispute concerning
9 the Company’s termination of Captain Edward Myer without just cause in violation of
10 the 2004 America West CBA.

11 68. In accordance with the RLA, including Section 204 thereof, 45 U.S.C. §
12 184, this Court has the power to compel the Company to strike for arbitration and
13 proceed to participate in the five-member System Board to resolve the dispute concerning
14 the Company’s termination of Captain Edward Myer without just cause in violation of
15 the 2004 America West CBA without conditioning its participation in those procedures
16 on USAPA’s agreement to bifurcate procedural and merits issues.

17 69. In accordance with the RLA, including Section 204 thereof, 45 U.S.C. §
18 184, this Court has the power to compel the Company to take all required steps and
19 measures so that the five-member System Board can hear and determine the dispute
20 concerning the Company’s termination of Captain Edward Myer without just cause in
21 violation of the 2004 America West CBA.

22 WHEREFORE, USAPA demands an order and judgment against US Airways and
23 in favor of USAPA as follows:

- 24 a. compelling US Airways to strike for arbitrators with respect to the
25 grievance concerning the termination of Captain Edward Myer
26 without just cause;
27 b. compelling US Airways to take all steps and measures necessary so as
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1 to submit the grievance concerning the termination of Captain Edward
2 Myer without just cause to arbitration as provided for in the 2004
3 America West CBA;

- 4 c. awarding USAPA reasonable attorneys' fees and costs arising out of
5 this action as determined by the Court; and
6 d. awarding such other and further relief as this Court may deem
7 equitable, proper and just.

8 DATED this 13th day of August, 2013.

9
10 **MARTIN & BONNETT, P.L.L.C.**

11 By: s/Susan Martin

12 Susan Martin
13 Jennifer L. Kroll
14 1850 N. Central Ave. Suite 2010
15 Phoenix, AZ 85004
(602) 240-6900

16 O'DWYER & BERNSTIEN, LLP
17 Brian O'Dwyer (*pro hac vice* app. pending)
18 Gary Silverman (*pro hac vice* app. pending)
52 Duane Street, 5th Fl.
New York, New York 10007
(212) 571-7100

19 Attorneys for Plaintiff.
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